

Exhibit W

<p style="text-align: right;">Page 94</p> <p>1 go back and forth between them if you need to. 2 MR. DUBIN: Can we flip back to 3 Valadez? 4 BY MR. DUBIN: 5 Q. Do you see that the Zimmerman report 6 image is more golden or orange? 7 A. I do. 8 Q. Do you know why that is? 9 A. From the BH2, which is the Zimmerman 10 report, we were on a tungsten lamp, and it was 11 to the respect that we were dealing with extra 12 yellows from the tungsten lamp. 13 Q. So the tungsten lamp was changing 14 the color of the particle then? 15 MS. O'DELL: Object to the 16 form. 17 MR. LUDWIG: Object to form. 18 BY MR. DUBIN: 19 Q. Is that correct? 20 MS. O'DELL: Object to the 21 form. 22 THE WITNESS: We felt it was 23 adding more yellow to the image of what we 24 were seeing and what we were documenting. 25 BY MR. DUBIN:</p>	<p style="text-align: right;">Page 96</p> <p>1 your question was. 2 MR. DUBIN: We can read the 3 question back. 4 THE COURT REPORTER: One 5 moment. 6 "QUESTION: And it wasn't just 7 adding yellow. If we go back to the 8 Zimmerman image, it was adding sort of 9 darker golden colors or orange colors to 10 the image, right?" 11 MS. O'DELL: Object to the 12 form. 13 MR. LUDWIG: I am going to 14 stand by my objection. 15 MR. DUBIN: So you're not just 16 objecting. You're instructing him not to 17 answer that question. I need to understand 18 that. 19 MR. LUDWIG: Correct. 20 MR. DUBIN: So if I ask him any 21 questions trying to compare various images in 22 his reports, are you going to instruct him not 23 to answer that? 24 MS. O'DELL: You can proceed 25 with your deposition, Morty. It's no way</p>
<p style="text-align: right;">Page 95</p> <p>1 Q. Okay. And it wasn't just adding 2 yellow. If we go back to the Zimmerman report 3 image, it was adding sort of darker golden 4 colors or orange colors to the image, right? 5 MS. O'DELL: Object to form. 6 MR. LUDWIG: Objection. This 7 calls for an expert opinion. 8 I will instruct you not to 9 answer that one. 10 MR. DUBIN: You're instructing 11 him not to answer that question about the 12 comparison between these two images? 13 MR. LUDWIG: Correct. You're 14 testifying and I am going to object to that 15 one. 16 MR. DUBIN: You're objecting 17 and you're instructing your witness not to 18 answer a question about the impact of lighting 19 on his images in the reports at issue in this 20 deposition and you're instructing him not to 21 answer. 22 Is that my understanding? 23 MR. LUDWIG: Could you -- let 24 me hear the question again because I think 25 you -- what you said was different than what</p>	<p style="text-align: right;">Page 97</p> <p>1 to -- to respond to that. I mean -- 2 MR. DUBIN: Okay. I just -- 3 we're obviously going to have to deal with 4 this after the end of the questioning today, 5 but we'll proceed. 6 MS. O'DELL: I am not finished. 7 MR. DUBIN: Okay. 8 MS. O'DELL: Stop interrupting, 9 please. If you ask him questions about the 10 image and the work that he did, he is 11 available to answer your question. He is not 12 here to offer expert opinion. It has been 13 stated numerous times. 14 MR. DUBIN: I am asking him 15 directly about his images right now. So -- 16 and he is still being instructed not to 17 answer. 18 BY MR. DUBIN: 19 Q. So, again, I am asking you a 20 question about this image. 21 The tungsten lighting is not 22 just adding more yellow; it's adding golden 23 colors and more orange color to the images, 24 right? Is that correct? 25 MR. LUDWIG: Object.</p>

1 I instruct you not to answer. 2 MR. DUBIN: You're instructing 3 him not to answer that question. Okay. 4 BY MR. DUBIN: 5 Q. And if we -- if we look at the 6 Valadez image, the effect of changing the 7 refractive index oil should have been to make 8 the particles less yellow, right? To move the 9 yellows towards the range of magenta, correct? 10 A. It was done to make it easier to 11 determine the upper refractive indices. 12 Q. But by -- if I have a particle that 13 is orange in parallel in 1.550 and I change my 14 oil to 1.560, it should appear more magenta, 15 right -- 16 MS. O'DELL: Objection. 17 BY MR. DUBIN: 18 Q. -- in the magenta range? 19 MS. O'DELL: Excuse me. 20 Objection. Seeks expert opinion. 21 MR. LUDWIG: Join. 22 I instruct the witness not to 23 answer. 24 BY MR. DUBIN: 25 Q. What color is this particle that you	Page 98 1 MR. DUBIN: Right. And so it's 2 also clear, it's CSM 001. 3 BY MR. DUBIN: 4 Q. Do you see rounded structures here 5 that you believe to be talc plates? 6 A. There are. 7 Q. And do you see that some of those 8 rounded structures have some red coloration 9 around the edges? 10 Do you see that? 11 A. I cannot -- 12 Q. (Inaudible.) 13 A. -- the edge color -- 14 MS. O'DELL: He was not 15 finished; so. 16 BY MR. DUBIN: 17 Q. What was the answer? 18 A. I cannot determine the edge colors 19 from the photograph as presented. 20 Q. You don't see red edges on the talc 21 plates? 22 MR. LUDWIG: Asked and 23 answered. 24 THE WITNESS: I don't on the 25 photograph as presented.
1 identified as chrysotile? What color is it? 2 A. Please, focus in. 3 Q. (Counsel complies.) 4 MS. O'DELL: Again, this is 5 page 33 of the Valadez report and that's being 6 shown on the screen? 7 MR. DUBIN: It may be page 32, 8 I think, but I don't know. Is it 33 or 32, 9 Jake? 10 MR. KEESTER: I have it as PDF 11 33. 12 MR. DUBIN: Okay. PDF 33. 13 THE WITNESS: It has a mottled 14 appearance, some yellow, but I cannot 15 ascertain the edge off of the photograph. 16 MR. DUBIN: Okay. 17 MS. O'DELL: And, Morty, just 18 to correct the record, I believe that this is 19 page 32 of the Valadez -- 20 MR. DUBIN: I said 32. It may 21 just be PDF 33. 22 MS. O'DELL: I am looking at 23 the actual report. The PDF report is 32 just 24 so it's clear when we go back what we're 25 looking at.	Page 99 1 BY MR. DUBIN: 2 Q. Is red a central stop dispersion 3 color that is associated with talc itself in 4 1.550 or 1.560? 5 A. I am not aware that it is. 6 Q. Do you ever go through any process 7 to calibrate your dispersion staining colors? 8 A. We do that. 9 Q. And how do you do that? How did you 10 do that? 11 A. I didn't do them. There was 12 somebody else in the lab that did them. 13 Q. Do you know what the process was? 14 A. Initially, it was through the 15 Cargille glass solids. 16 Q. Cargille glass? 17 A. Yes, and -- 18 Q. And -- 19 MS. O'DELL: Sorry. He is not 20 finished. 21 BY MR. DUBIN: 22 Q. Go ahead. 23 A. And then recently was acquired a 24 refractive scope where you can check your 25 index difference.

<p style="text-align: right;">Page 102</p> <p>1 Q. And Cargille -- those Cargille glass 2 standards have a single refractive index; is 3 that right? 4 A. That is correct. 5 Q. Meaning that they only have one true 6 central stop dispersion staining color; is 7 that correct? 8 A. That is correct. 9 Q. Okay. Can you still see sometimes 10 edges on the Cargille glass that show a 11 different color, not their true central stop 12 dispersion staining color? Can you sometimes 13 see edges on them of different colors? 14 MS. O'DELL: Objection to the 15 form to the degree it's talking about a 16 process that he did not do himself. 17 BY MR. DUBIN: 18 Q. Just only if you know personally? 19 MS. O'DELL: And do not 20 speculate, please, Mr. Hess. If you -- if 21 that's a process you were involved in for 22 purposes of your work in this case, you can 23 respond, but if it was not, well, that's 24 beyond the scope, and that's expert opinion. 25 THE WITNESS: I did not do the</p>	<p style="text-align: right;">Page 104</p> <p>1 A. I am unfamiliar with the term. 2 Q. If we scroll down so we can see the 3 bottom of this, you see that there is a 4 refractive index number, 1.564; that is the 5 refractive index number that you assigned to 6 this particle; is that correct? 7 A. That is correct. 8 Q. Do you know what color that 9 refractive index number corresponds to in 10 1.560 oil? 11 A. Without the temperature information 12 handy and without the actual charts utilized, 13 it was more of a. 14 Q. So are you done with your answer? 15 A. I don't recall exactly off the top 16 of my head. 17 Q. Well, let's go through the process 18 so we understand how you can take that 19 refractive index number and determine what 20 color you were calling this particle. 21 And so I am going to show you a 22 couple different slides. We can just mark 23 them as separate exhibits. We can just start 24 with slide 34. 25 THE COURT REPORTER: For the</p>
<p style="text-align: right;">Page 103</p> <p>1 calibrations -- 2 BY MR. DUBIN: 3 Q. Are you -- 4 A. -- just said. 5 Q. Are you familiar with the fact that 6 you can -- that even with Cargille glass that 7 has a single refractive index, you can 8 sometimes see edge colors that don't 9 correspond to that refractive index? 10 MS. O'DELL: Objection; seeks 11 expert opinion beyond the scope of the 12 deposition. I will let Mr. Hess' counsel 13 instruct him. 14 MR. LUDWIG: I am going to 15 instruct him not to answer that question. 16 BY MR. DUBIN: 17 Q. Do you know what total reflection 18 means in the context of PLM dispersion 19 staining? 20 MS. O'DELL: Same objection. 21 MR. LUDWIG: Is the question 22 does he know what total dispersion -- repeat, 23 please? 24 BY MR. DUBIN: 25 Q. Total reflection.</p>	<p style="text-align: right;">Page 105</p> <p>1 record, I believe this is Exhibit 15. 2 MR. DUBIN: Thank you. 3 (Exhibit 15 marked for 4 identification.) 5 BY MR. DUBIN: 6 Q. Do you know the temperature in the 7 lab at MAS? 8 A. We did have an immersion thermometer 9 at station. 10 Q. And what is the temperature? 11 A. It was 21 degrees. 12 Q. And so if we wanted to figure out 13 what color you're calling the particle, we 14 could look at the Su tables or 1.560, and we 15 take your RI given, right, and then we can 16 match that up with a wavelength of light, 17 correct? 18 A. Correct. 19 MS. O'DELL: I object to the 20 question. 21 Where did this table -- what 22 reference did this table come from? 23 MR. DUBIN: You're familiar 24 with the Su tables. We can mark them as an 25 exhibit if it's necessary. I will mark the Su</p>

<p style="text-align: right;">Page 106</p> <p>1 tables so we have them. I will mark the Su 2 tables as Exhibit 35. I guess it must be 3 CX-26.</p> <p>4 MR. LUDWIG: My understanding, 5 this is a document prepared by defense 6 counsel. This is not the Su tables. This is 7 an excerpt, table, picture of Dr. Su, and some 8 other things; is that correct?</p> <p>9 MR. DUBIN: An excerpt and 10 that's why in case you need it, I am marking 11 the entire document as the next exhibit.</p> <p>12 MR. LUDWIG: Okay. Well, now I 13 am objecting to testimony about this document 14 then.</p> <p>15 MR. DUBIN: What is your 16 possible objection about my asking him about 17 the color of the particle in the report that 18 he is here to be deposed about?</p> <p>19 MR. LUDWIG: I am objecting to 20 this exhibit 15, which is a defense exhibit --</p> <p>21 MR. DUBIN: It's --</p> <p>22 MR. LUDWIG: -- that's what I 23 am objecting to.</p> <p>24 MR. DUBIN: Okay. So, 25 Mr. Placitella, do you agree and say that you</p>	<p style="text-align: right;">Page 108</p> <p>1 I understand you're going to 2 put the Su tables that you're referring to in 3 the chat and so if you go ahead and do that 4 and I assume they are going to be marked as 5 exhibit 16; is that correct?</p> <p>6 MR. DUBIN: I think that's the 7 correct number. Exhibit 16 will be the Su 8 tables.</p> <p>9 MS. O'DELL: And if you need to 10 see the Su tables, Mr. Hess, or anything else, 11 just request that, and we'll get it in front 12 of you.</p> <p>13 MR. DUBIN: That's fine. 14 (Exhibit 16 marked for 15 identification.)</p> <p>16 BY MR. DUBIN: 17 Q. Anyway, so you can look at the RI 18 that you gave, 1.564, and that will correspond 19 with a wavelength of light, correct?</p> <p>20 A. That is correct.</p> <p>21 Q. And we can see that the wavelength 22 of -- the color associated with that 23 wavelength of light is purple, right, 560 24 nanometers?</p> <p>25 A. In the color chart, that's what it</p>
<p style="text-align: right;">Page 107</p> <p>1 can never use a demonstrative created by 2 counsel as part of examining a witness? 3 Because I am curious about your view on that, 4 Mr. Placitella. So no more creating exhibits 5 to ask -- or demonstratives to ask our 6 witnesses about, right, Mr. Placitella, or do 7 you disagree with --</p> <p>8 MR. LUDWIG: (Inaudible) --</p> <p>9 MR. PLACITELLA: You're now 10 asking me questions?</p> <p>11 MR. DUBIN: I am asking you 12 that question.</p> <p>13 MR. PLACITELLA: How about I 14 ask you a few?</p> <p>15 BY MR. DUBIN:</p> <p>16 Q. All right. I am going to continue 17 to ask you questions about this document.</p> <p>18 So going back to this, you can 19 find on the table --</p> <p>20 MS. O'DELL: Morty, excuse me. 21 The reason I asked is so if this is a 22 defense-created exhibit, so we understand 23 what's being discussed and for the record, 24 first; and then, second, so Mr. Hess has an 25 understanding of what's being asked of him.</p>	<p style="text-align: right;">Page 109</p> <p>1 shows.</p> <p>2 Q. So for purposes of your analysis 3 calling this chrysotile, you were treating 4 this particle as if it was purple, correct?</p> <p>5 MS. O'DELL: Object to the 6 form.</p> <p>7 THE WITNESS: I was treating 8 what I could see around the edges through my 9 scope.</p> <p>10 BY MR. DUBIN:</p> <p>11 Q. And, in fact, if we -- if we look 12 back at what we looked at before, which was 13 reference chrysotile -- we can put that slide 14 back up.</p> <p>15 MR. DUBIN: I don't remember 16 what number it was, but for calling it up, 17 Jake, we can use slide 40.</p> <p>18 BY MR. DUBIN:</p> <p>19 Q. Reference chrysotile, the refractive 20 index number given for that particle by ISO is 21 1.556; that corresponds to magenta, correct?</p> <p>22 MS. O'DELL: Object to the 23 form.</p> <p>24 We had an objection previously 25 to this exhibit because it calls for an expert</p>

<p style="text-align: right;">Page 110</p> <p>1 opinion and so --</p> <p>2 MR. DUBIN: Are you instructing</p> <p>3 him not to answer?</p> <p>4 MR. LUDWIG: I am instructing</p> <p>5 him not to answer for the reasons stated</p> <p>6 before.</p> <p>7 MR. DUBIN: Okay. Let's go</p> <p>8 to -- make the next exhibit slide 43.</p> <p>9 MR. KEESTER: I'm sorry, Morty.</p> <p>10 That was 43?</p> <p>11 MR. DUBIN: Yeah, and that will</p> <p>12 be exhibit 17.</p> <p>13 (Exhibit 17 marked for</p> <p>14 identification.)</p> <p>15 BY MR. DUBIN:</p> <p>16 Q. The number -- the wavelength of</p> <p>17 light that you assigned to this particle on</p> <p>18 the left that you're calling chrysotile in</p> <p>19 Johnson & Johnson, you are saying that it is</p> <p>20 even more purple than standard reference</p> <p>21 chrysotile depicted on the right, correct?</p> <p>22 MS. O'DELL: Objection.</p> <p>23 This is an incomplete depiction</p> <p>24 of what's being examined. It is including</p> <p>25 images that are not Dr. -- Mr. Hess', excuse</p>	<p style="text-align: right;">Page 112</p> <p>1 to an ISO record for chrysotile and that is</p> <p>2 beyond the scope of this deposition.</p> <p>3 That's -- that is --</p> <p>4 MR. DUBIN: Are you instructing</p> <p>5 him not to answer?</p> <p>6 MS. O'DELL: Let me finish.</p> <p>7 I'm sorry. Let me finish. I stuttered there.</p> <p>8 Judge Schneider was very clear</p> <p>9 that he is going to be asked about his work</p> <p>10 and not a comparison of his work to others and</p> <p>11 that is expert opinion and that's why we're</p> <p>12 instructing him not to answer.</p> <p>13 MR. DUBIN: Okay. So you're</p> <p>14 instructing him not to answer?</p> <p>15 MR. LUDWIG: Correct.</p> <p>16 MR. DUBIN: Okay.</p> <p>17 BY MR. DUBIN:</p> <p>18 Q. I want to make sure and let me raise</p> <p>19 the question.</p> <p>20 As a fact, factually, you</p> <p>21 assigned a darker purple color to that</p> <p>22 particle on the left than standard reference</p> <p>23 chrysotile, correct?</p> <p>24 MS. O'DELL: Objection; that is</p> <p>25 the same objection, and I just also object to</p>
<p style="text-align: right;">Page 111</p> <p>1 me, and it is an inappropriate examination of</p> <p>2 this witness, who is a fact witness, and seeks</p> <p>3 expert opinion, and we to object to it.</p> <p>4 MR. DUBIN: First off, I don't</p> <p>5 understand how you can say every time that he</p> <p>6 is a fact witness and not an expert. He is</p> <p>7 here to be deposed about his polarized light</p> <p>8 microscopy work. There is no way to depose</p> <p>9 someone about their polarized light microscopy</p> <p>10 work without asking them questions that are</p> <p>11 technical in nature.</p> <p>12 And so if your objection is</p> <p>13 that every time I ask him for something about</p> <p>14 his conclusions, it's an expert opinion, then</p> <p>15 you are essentially shutting down this</p> <p>16 deposition. It's --</p> <p>17 MS. O'DELL: That's not</p> <p>18 correct. We're asking -- we have not</p> <p>19 instructed Mr. Hess to not respond to</p> <p>20 questions that are technical. We have</p> <p>21 instructed him not to give expert opinion</p> <p>22 because he is here as a fact witness as you</p> <p>23 know and as the Special Master has ruled.</p> <p>24 And this seeks a comparison</p> <p>25 between the photomicrograph that Mr. Hess took</p>	<p style="text-align: right;">Page 113</p> <p>1 use of this color chart without reference to</p> <p>2 the other charts from Dr. Su's tables that</p> <p>3 take into consideration the temperature and</p> <p>4 other aspects of the table. It's an</p> <p>5 incomplete hypothetical. He --</p> <p>6 MR. DUBIN: I am sorry. I</p> <p>7 don't think you understand the -- I don't</p> <p>8 think you understand how the analysis works.</p> <p>9 Because we already did the temperature of the</p> <p>10 lab when we figured out what nanometer of</p> <p>11 light he was calling the particle. So that is</p> <p>12 not a valid objection scientifically. Are you</p> <p>13 instructing him not to answer?</p> <p>14 MS. O'DELL: I am going to let</p> <p>15 Mr. Hess' counsel instruct him, but I have</p> <p>16 made my objection.</p> <p>17 MR. LUDWIG: I am instructing</p> <p>18 him not to answer.</p> <p>19 MR. PLACITELLA: I would just</p> <p>20 like to -- can you hear me? I would just like</p> <p>21 to add the following objection and I am trying</p> <p>22 to stay out of this.</p> <p>23 If you're taking a tiny, little</p> <p>24 piece of a big slide and then blowing -- and</p> <p>25 then sticking it next to a different slide,</p>

1 there is no guarantee that this accurately 2 depicts what the actual slide looks like, 3 especially on a Zoom presentation. So that's 4 my concern to put on the record. 5 MR. DUBIN: Okay. And my -- 6 MR. PLACITELLA: Now I'll go 7 back to sleep. 8 MR. DUBIN: My response to that 9 is we're comparing the colors associated with 10 two different nanometers of light, which are 11 depicted accurately on the slide, and I 12 understand that you guys are instructing him 13 not to answer and okay. So we'll have to deal 14 with that later. 15 MR. PLACITELLA: No, no, but my 16 objection was beyond that. My objection was 17 how this was put together, who put the colors 18 on what piece of the photograph and, you know, 19 what someone is being asked to interpret over 20 Zoom; that's all. Now I will go back to 21 sleep. 22 MR. DUBIN: Yeah. Okay. 23 BY MR. DUBIN: 24 Q. So let's go back to the Valadez 25 report.	Page 114 1 Q. How can we independently verify with 2 your report that that particle is purple 3 without actually being at your scope? 4 MS. O'DELL: Objection. 5 MR. LUDWIG: Objection; calls 6 for -- objection to form. 7 BY MR. DUBIN: 8 Q. You can respond. 9 A. So I do the documentation on the 10 pictures. 11 Q. But you're telling me that the 12 pictures don't show the purple. 13 So how can we independently -- 14 how can we verify that that particle, in fact, 15 has purple? 16 MS. O'DELL: Objection; 17 misstates his testimony. 18 MR. LUDWIG: Join. 19 THE WITNESS: It's documented 20 as part of the report. It's in the picture. 21 BY MR. DUBIN: 22 Q. So you're saying that purple is in 23 the picture. 24 So where is the purple? 25 MS. O'DELL: Objection;
Page 115 1 Are you -- are you swearing 2 that particle as purple in -- 3 MS. O'DELL: Object to -- 4 THE COURT REPORTER: Please 5 repeat your question. 6 BY MR. DUBIN: 7 Q. Are you swearing that that particle 8 is purple, the one depicted in 001? 9 MR. LUDWIG: Objection to form. 10 THE WITNESS: No. The particle 11 itself interior-wise has yellow. I utilized 12 what I could find through the scope around the 13 edges or at the edge. 14 BY MR. DUBIN: 15 Q. So are you telling me that that 16 particle we're looking at is somehow entirely 17 surrounded with purple, but we just can't see 18 it? 19 MS. O'DELL: Objection to the 20 form; asked and answered. 21 MR. LUDWIG: Argumentative. 22 BY MR. DUBIN: 23 Q. You can respond. 24 A. Based on what I saw through the 25 microscope.	Page 115 1 misstates his testimony. 2 BY MR. DUBIN: 3 Q. You can respond. 4 A. I make my determinations on what I 5 can see through the scope and it's represented 6 to the best that I can get it on the screen in 7 the picture. 8 Q. Okay. But can we verify that with 9 the picture? Can we verify that in some way? 10 A. Other than what's on the picture, 11 Counselor, I cannot speculate. 12 MR. LUDWIG: Do you need it 13 blown up? 14 MR. DUBIN: We can blow it up. 15 MR. PLACITELLA: There it is. 16 BY MR. DUBIN: 17 Q. Do you see purple or red on the talc 18 plates in this image? To the extent you're 19 claiming you see it on that particle, do you 20 see it on all the rounded talc plates? 21 A. On this image, I can just barely. 22 Q. On the rounded talc plates, right? 23 MR. LUDWIG: Listen to the 24 question. 25 BY MR. DUBIN:

<p style="text-align: right;">Page 118</p> <p>1 Q. You can see those kind of edge 2 effects on the talc plates as well, right? 3 MS. O'DELL: I am -- the screen 4 is about ten feet away from Mr. Hess. I am 5 handing him the Valadez report on my computer 6 so he can see it more clearly. 7 BY MR. DUBIN: 8 Q. Do you see those same kind of edge 9 effects on all -- on the talc plates? 10 A. I can see parts, yes. 11 Q. But talc plates aren't purple in 12 1.560 oil, right, and they are not red, 13 correct? 14 MS. O'DELL: And if you need to 15 make it bigger or smaller, Mr. Hess, you can 16 just -- you can touch my screen. 17 BY MR. DUBIN: 18 Q. You can focus on any of these 19 rounded talc plates and you'll see the same 20 edge effects, right? 21 MS. O'DELL: Object to the 22 form. 23 THE WITNESS: Similar. 24 BY MR. DUBIN: 25 Q. So what refractive index number</p>	<p style="text-align: right;">Page 120</p> <p>1 A. At least my opinion of what I am 2 seeing not only on the dispersion staining, 3 but also on the appearance of the structure, 4 whether it shows fibrousity. 5 Q. You are basing your refractive 6 index -- 7 MS. O'DELL: Excuse me. Were 8 you finished with your answer? 9 THE WITNESS: It's based on 10 what I see through the scope and my 11 examination of the particle. 12 BY MR. DUBIN: 13 Q. You are basing your assessment of 14 the refractive index of this particle that 15 you're calling chrysotile based on edge 16 effects that are also present on the rounded 17 talc plates, correct? 18 MS. O'DELL: Objection; 19 misstates his testimony. 20 BY MR. DUBIN: 21 Q. You can respond. 22 A. I base it on what I see around the 23 particle itself. 24 Q. And those -- again, my question is, 25 what you're claiming -- the effect that you're</p>
<p style="text-align: right;">Page 119</p> <p>1 would you assign to any of the talc plates 2 that also have that edge effect? What would 3 you -- what is the refractive index of the 4 talc plates? 5 MS. O'DELL: Object to the 6 form; expert opinion. 7 MR. LUDWIG: This is an expert 8 opinion. I am going to instruct him not to 9 answer that one. 10 BY MR. DUBIN: 11 Q. Mr. Hess, you're basing your calling 12 this particle chrysotile on edge effects that 13 are also present on the talc plates 14 themselves; isn't that right? 15 MS. O'DELL: Objection; 16 misstates his testimony. 17 BY MR. DUBIN: 18 Q. You can respond. 19 MS. O'DELL: Objection; 20 misstates his testimony. 21 MR. LUDWIG: Join. 22 MS. O'DELL: Seeks expert 23 opinion. 24 BY MR. DUBIN: 25 Q. You can respond.</p>	<p style="text-align: right;">Page 121</p> <p>1 claiming to see around that particle you're 2 calling chrysotile is also present on the 3 round talc plates, correct? 4 MS. O'DELL: Objection. 5 MR. LUDWIG: Objection, asked 6 and answered. 7 MS. O'DELL: Misstates his 8 testimony. 9 BY MR. DUBIN: 10 Q. You can respond. 11 A. I am basing it on my determination 12 from what's around the particle. I do not 13 take into account what's around the talc. 14 Q. Okay. So you don't consider whether 15 or not, because this effect is also on the 16 talc plates, whether it's an artifact of 17 your -- of your analysis? You don't look at 18 the talc plates to see whether you see the 19 exact same effect on the talc plates? 20 MS. O'DELL: Objection; 21 misstates his testimony. It's not what he 22 testified a moment ago. 23 BY MR. DUBIN: 24 Q. Are these talc plates, are those 25 also purple, according to you, if you're</p>

<p style="text-align: right;">Page 122</p> <p>1 looking at the edge effects?</p> <p>2 A. What I am seeing on there is more of 3 a red, but it's not in focus to the point that 4 I would be able to make a determination.</p> <p>5 Q. So would the refractive -- would the 6 refractive index value for those talc plates 7 correspond to red?</p> <p>8 MS. O'DELL: Objection.</p> <p>9 He was just saying it wasn't in 10 focus and you can't make that determination 11 from a photomicrograph on a screen.</p> <p>12 BY MR. DUBIN:</p> <p>13 Q. So are those talc plates -- does the 14 refractive index that you assigned to them 15 based on their edges, does that correspond to 16 red?</p> <p>17 MS. O'DELL: Same objection.</p> <p>18 BY MR. DUBIN:</p> <p>19 Q. You can respond.</p> <p>20 A. I would not give it the same.</p> <p>21 THE COURT REPORTER: Please 22 repeat your answer.</p> <p>23 MR. LUDWIG: I think it was: I 24 would not give it the same.</p> <p>25 I think you were still talking?</p>	<p style="text-align: right;">Page 124</p> <p>1 MR. PLACITELLA: -- trying to 2 keep the record clean.</p> <p>3 MR. DUBIN: Okay.</p> <p>4 BY MR. DUBIN:</p> <p>5 Q. What CSDS color are you assigning to 6 the talc plates that we're looking at?</p> <p>7 MS. O'DELL: Object to the 8 form; that seeks expert opinion. He is not 9 a -- he did not analyze these particular talc 10 particles. He didn't make findings in the 11 report.</p> <p>12 To ask him to do it on the fly, 13 in a Zoom is an expert opinion and beyond the 14 scope of what he did for the report and we 15 object on that basis.</p> <p>16 MR. DUBIN: Are you instructing 17 him not to answer the question?</p> <p>18 MR. LUDWIG: I was just going 19 to say, exactly, and I am instructing him not 20 to answer that question because he is not -- 21 it's not the scope. Him doing an analysis of 22 a talc particle on the fly is not what the 23 Judge -- is not the purpose of this 24 deposition.</p> <p>25 MR. DUBIN: Okay. You have</p>
<p style="text-align: right;">Page 123</p> <p>1 THE WITNESS: No; that's it. I 2 would not give it the same.</p> <p>3 BY MR. DUBIN:</p> <p>4 Q. So what is the CSDS color of, let's 5 say, this large talc plate towards the bottom 6 left? What is the CSDS color that you would 7 use to assign a refractive index to that 8 particle?</p> <p>9 MS. O'DELL: Which particle?</p> <p>10 MR. PLACITELLA: I will place 11 an objection before he answers and I know 12 you're doing the best you can, but at this 13 point, at least on the screen that I am 14 seeing, this image is pretty blurry, you know, 15 but you did -- you're doing the best you can.</p> <p>16 MR. DUBIN: This is the image 17 that we have from Dr. Longo.</p> <p>18 MR. PLACITELLA: Well, that's 19 not necessarily the image. This is a blowup 20 on a Zoom, you know.</p> <p>21 MR. DUBIN: He also has the 22 actual report in front of him on a computer. 23 Now what?</p> <p>24 MR. PLACITELLA: Just --</p> <p>25 MR. DUBIN: Okay.</p>	<p style="text-align: right;">Page 125</p> <p>1 instructed him not to answer. We'll just deal 2 with it in court later.</p> <p>3 Let's look at the second image, 4 002.</p> <p>5 MS. O'DELL: Okay. What image 6 are you looking at and what page?</p> <p>7 MR. DUBIN: Okay. So, Jake, 8 can you give the page? This is the image of 9 CSM 002.</p> <p>10 MR. KEESTER: So my PDF is page 11 38, but since your report seems to be one page 12 less, it will probably be page 37, but it is 13 CSM-002.</p> <p>14 MS. O'DELL: Okay.</p> <p>15 BY MR. DUBIN:</p> <p>16 Q. What color is that particle?</p> <p>17 A. Can you zoom in, please?</p> <p>18 Q. Sure.</p> <p>19 A. The particle itself, yellow with 20 some pale blue.</p> <p>21 Q. Okay. And do you see that there is 22 a rounded talc plate? If you move your eye 23 from the top of the two arrows over towards 24 the left, there is a rounded talc plate.</p> <p>25 Do you see that?</p>

<p>1 MR. LUDWIG: Objection. 2 Once again, you're asking him 3 to analyze what you claim to be a talc 4 particle on the fly; that calls for expert 5 testimony. I am instructing him not to answer 6 that question.</p> <p>7 BY MR. DUBIN: 8 Q. You said you have done PLM 9 dispersion staining analysis for 30 years, 10 Mr. Hess?</p> <p>11 A. That is correct.</p> <p>12 Q. Are you not -- are you not able to 13 tell me -- to follow over on the image and 14 look at this talc plate with me? Is that 15 beyond your experience and training?</p> <p>16 MR. LUDWIG: I am going to 17 object.</p> <p>18 This is argumentative. His 19 experience is under the microscope. So I am 20 objecting to the form of the question. It's 21 argumentative.</p> <p>22 BY MR. DUBIN: 23 Q. Is the particle you're calling 24 chrysotile here, is that essentially the same 25 color as the talc plates in the image?</p>	<p>Page 126</p> <p>1 identification.) 2 BY MR. DUBIN: 3 Q. You -- for purposes of your 4 analysis, you're calling this particle 5 somewhere between a magenta and a purple for 6 purposes of your analysis, right?</p> <p>7 MS. O'DELL: Just wait a 8 minute.</p> <p>9 What particle is this?</p> <p>10 MR. DUBIN: This is the same 11 particle, CSM 002.</p> <p>12 BY MR. DUBIN: 13 Q. You're calling it somewhere between 14 a magenta and a purple for purposes of your 15 analysis?</p> <p>16 A. I am calling the edge that I saw.</p> <p>17 Q. You're calling the edge that you saw 18 purple and magenta? Is that what you're 19 saying?</p> <p>20 A. That is correct.</p> <p>21 Q. The same type of purple or red 22 colors that are on the talc plates?</p> <p>23 MS. O'DELL: Object to the 24 form.</p> <p>25 MR. LUDWIG: Object to the</p>
<p>1 MR. LUDWIG: Objection, same 2 objection. I am instructing him not to 3 answer.</p> <p>4 MR. DUBIN: Okay. Can't wait 5 to be heard on these. All right.</p> <p>6 BY MR. DUBIN: 7 Q. Do you know what -- if we go down 8 and we look at the RI value, RI 1.565, do you 9 know what color that -- by reporting that 10 refractive index value for this particle, do 11 you know what color you were calling it?</p> <p>12 A. I don't recall.</p> <p>13 MR. DUBIN: Let's go to the 14 slide, Jake, and we'll make that the next in 15 order, the slide for this particle; that will 16 be exhibit -- are we on 17 or 18?</p> <p>17 THE COURT REPORTER: One moment 18 and I can verify.</p> <p>19 MR. DUBIN: Sure. I think it's 20 18.</p> <p>21 THE COURT REPORTER: Yes, this 22 is Exhibit 18.</p> <p>23 MR. DUBIN: Why don't we call 24 up that slide and we can put it in chat.</p> <p>25 (Exhibit 18 marked for</p>	<p>Page 127</p> <p>1 form. 2 I instruct you not to answer.</p> <p>3 BY MR. DUBIN: 4 Q. Do you know -- as you adjust the 5 focus on a microscope up and down, do you know 6 whether you can -- if things are out of focus, 7 you can see a red edge on particles? Are you 8 familiar with that?</p> <p>9 A. I have observed that.</p> <p>10 Q. And so one way that you can get 11 these types of edges around particles is if 12 they are just not -- if they are -- is your 13 focus, depending on your focus, right?</p> <p>14 MS. O'DELL: Object to the 15 form.</p> <p>16 THE WITNESS: Correct.</p> <p>17 BY MR. DUBIN: 18 Q. And without these edges, without 19 these sort of red colors at the edges, then 20 the CSDS color that you would have had to 21 assign to the particle would be -- would 22 correspond to yellow, right?</p> <p>23 MR. LUDWIG: Objection to form.</p> <p>24 That's calling for an expert 25 analysis, which he is not here to present</p>

1 today. 2 MR. DUBIN: Are you instructing 3 your witness not to answer yet again? 4 MR. LUDWIG: I am instructing 5 him not to answer that one, yes. 6 MR. DUBIN: Okay. 7 BY MR. DUBIN: 8 Q. How can you tell whether or not the 9 red that you're seeing on the edges is an 10 artifact of focus? 11 A. By assuring that my particle is in 12 focus. 13 Q. Mr. Placitella was complaining that 14 the image is blurry. 15 Does it look completely in 16 focus to you? 17 MS. O'DELL: Object to the 18 form. 19 MR. LUDWIG: Join. 20 THE WITNESS: I base it on what 21 I see through the scope. 22 BY MR. DUBIN: 23 Q. Do you know whether or not edge 24 effects like that can be created by total 25 refraction even for an in focus particle? Do	Page 130 1 MR. DUBIN: You asked -- okay. 2 I have told you the answer. I am asking him 3 about it. 4 MR. KEESTER: Sorry to jump in. 5 I can't share a slide while I have it open. 6 It's the way Microsoft applications work. So 7 I am sharing them the moment I close out of 8 PowerPoint. 9 MS. O'DELL: Okay. Thank you. 10 MR. DUBIN: Okay. We can go 11 back to the Valadez report. We can put that 12 one in chat. 13 BY MR. DUBIN: 14 Q. And as I said, I believe there was a 15 question pending before the objection. 16 Are you familiar with the fact 17 that the phenomena of total reflection can 18 create these kind of edge effects for 19 particles? 20 MR. LUDWIG: Can that be reread 21 back? I'm sorry. There was a break in the 22 question, maybe distorted by the Zoom. I am 23 sorry. 24 MR. DUBIN: It's fine. I 25 already asked him. He didn't know what the
Page 131 1 you know that? 2 MS. O'DELL: Objection to the 3 form; calls for expert opinion. 4 Morty, this slide has not been 5 put in the chat and so we would request that 6 it be put in the chat. 7 MR. DUBIN: We're doing it. 8 Obviously, it takes a little time to do the 9 slides and it's not like you're not seeing the 10 whole document, but we'll put them in chat. 11 MS. O'DELL: We thank you and 12 we need to see them. It's important. 13 The second thing is, where did 14 this color bar, color chart come from on the 15 side and -- because it's unclear from what's 16 being -- 17 MR. DUBIN: These are slides 18 that have been presented to Dr. Longo before 19 for his testimony and that he has agreed to. 20 So these are -- this type of color bar was 21 used in the 104 hearings with Dr. Longo, in 22 addition to being used in his Eagles and Lonzo 23 depositions. 24 MS. O'DELL: That's completely 25 immaterial.	Page 132 1 phenomina was earlier. So it's fine. Don't 2 worry about it. This next -- let's go to CSM 3 003. 4 BY MR. DUBIN: 5 Q. What color is the particle? 6 A. The particle appears to be yellow. 7 Q. Do you know at -- by assigning RI 8 1.568, do you know what color you were calling 9 this particle? 10 A. Not without the charts available. 11 Q. All right. You were -- do you know 12 you were calling this particle somewhere 13 between a magenta and purple? 14 MS. O'DELL: Objection to form. 15 MR. LUDWIG: Can you zoom in on 16 the particle, please? 17 MR. DUBIN: Sure. 18 BY MR. DUBIN: 19 Q. You're treating this particle for 20 purposes of your analysis as if it is magenta 21 and purple? 22 MS. O'DELL: Objection to the 23 form. 24 He said he can't -- cannot 25 determine that without the charts and other

<p>1 materials used in --</p> <p>2 MR. LUDWIG: (Inaudible) it's</p> <p>3 clear to you. I mean, we're dealing with a</p> <p>4 situation where it's ten, fifteen feet from</p> <p>5 you; so.</p> <p>6 BY MR. DUBIN:</p> <p>7 Q. You're the analyst who did this</p> <p>8 work.</p> <p>9 What color were you calling it?</p> <p>10 MS. O'DELL: And just for the</p> <p>11 record, what's the page of the Valadez report?</p> <p>12 MR. KEESTER: Mine is page 43.</p> <p>13 Yours is probably page 42.</p> <p>14 MS. O'DELL: Thank you.</p> <p>15 MR. DUBIN: And maybe it will</p> <p>16 help. We can make exhibit 19 slide 48 and put</p> <p>17 that up.</p> <p>18 MR. LUDWIG: Mr. Dubin, we have</p> <p>19 been going for a little --</p> <p>20 MR. DUBIN: We'll break after</p> <p>21 this slide and we'll take lunch.</p> <p>22 MR. LUDWIG: We'll take a lunch</p> <p>23 break after this slide.</p> <p>24 (Exhibit 19 marked for</p> <p>25 identification.)</p>	<p>Page 134</p> <p>1 Q. Not the particle, what you're</p> <p>2 calling the edge effects, right, or the edges,</p> <p>3 you're saying?</p> <p>4 A. That is correct.</p> <p>5 Q. Okay. And we can go back to the</p> <p>6 image in the Valadez, same image, and you can</p> <p>7 see you have these edges, the same types of</p> <p>8 edges on these -- on many of the rounded</p> <p>9 structures that are talc plates, right?</p> <p>10 MS. O'DELL: Objection to the</p> <p>11 form.</p> <p>12 MR. LUDWIG: Same objection.</p> <p>13 I instruct him not to answer.</p> <p>14 Once again, on-the-fly analysis of talc</p> <p>15 plates.</p> <p>16 MR. DUBIN: You're instructing</p> <p>17 him not to answer?</p> <p>18 MR. LUDWIG: Correct.</p> <p>19 BY MR. DUBIN:</p> <p>20 Q. Okay. And, again, I want to</p> <p>21 understand your experience, your personal</p> <p>22 experience with these types of edge effects,</p> <p>23 and I just want to ask you about an image,</p> <p>24 whether it's something that you have seen</p> <p>25 before.</p>
<p>1 BY MR. DUBIN:</p> <p>2 Q. Do you know that the refractive</p> <p>3 index that you have assigned to this particle</p> <p>4 corresponds to the colors magenta and purple?</p> <p>5 Are you aware of that?</p> <p>6 A. I do see --</p> <p>7 MR. PLACITELLA: I have the</p> <p>8 same objection I had before. This is even</p> <p>9 less clear than the last one.</p> <p>10 BY MR. DUBIN:</p> <p>11 Q. Okay. Are you aware that the</p> <p>12 refractive index numbers you assigned to this</p> <p>13 particle are -- correspond to magenta and</p> <p>14 purple?</p> <p>15 MS. O'DELL: Object to the</p> <p>16 form.</p> <p>17 He has already testified he</p> <p>18 would need the charts and other information.</p> <p>19 BY MR. DUBIN:</p> <p>20 Q. Well, just -- do you know that? Are</p> <p>21 you aware that that's the color you said this</p> <p>22 particle was?</p> <p>23 A. I am.</p> <p>24 Q. Okay.</p> <p>25 A. But not the particle.</p>	<p>Page 135</p> <p>1 MR. DUBIN: And we'll mark that</p> <p>2 as exhibit 20. It will be CX-56.</p> <p>3 (Exhibit 20 marked for</p> <p>4 identification.)</p> <p>5 BY MR. DUBIN:</p> <p>6 Q. So Cargille glass, Cargille glass</p> <p>7 has a single refractive index, right?</p> <p>8 MS. O'DELL: Objection to the</p> <p>9 form.</p> <p>10 What's being shown on the</p> <p>11 screen?</p> <p>12 MR. DUBIN: These are images of</p> <p>13 Cargille glass in dispersion staining. I am</p> <p>14 asking him about his experience and his</p> <p>15 background, experience, and training.</p> <p>16 MS. O'DELL: He is not here as</p> <p>17 an expert witness and --</p> <p>18 MR. LUDWIG: Right. So --</p> <p>19 MS. O'DELL: -- this is beyond</p> <p>20 the scope. Excuse me. Counsel, go ahead.</p> <p>21 MR. LUDWIG: I'm sorry. So I</p> <p>22 am instructing the witness not to answer.</p> <p>23 Exactly.</p> <p>24 BY MR. DUBIN:</p> <p>25 Q. And I am going to keep asking you</p>

<p style="text-align: right;">Page 138</p> <p>1 some questions about this and if your attorney 2 wants to object and say for you not to answer 3 to each of them, that's fine. We'll do that. 4 Can you see -- are you familiar 5 with this phenomena that even if you look at a 6 particle with a single refractive index, 7 right, for example, blue here, you can see 8 sometimes these edge effects such as the red 9 or the purple that we're seeing in this image? 10 Are you familiar with the fact 11 that that happens?</p> <p>12 MS. O'DELL: Objection; beyond 13 the scope of the deposition; beyond the scope 14 of this witness' testimony; assumes facts not 15 in evidence.</p> <p>16 BY MR. DUBIN:</p> <p>17 Q. Do you know how to determine -- 18 sorry.</p> <p>19 MR. DUBIN: Is there 20 instruction not to answer that?</p> <p>21 MR. LUDWIG: There is 22 instruction not to answer that, yes.</p> <p>23 BY MR. DUBIN:</p> <p>24 Q. Do you know how to determine in 25 these kind of circumstances what the true CSDS</p>	<p style="text-align: right;">Page 140</p> <p>1 MS. O'DELL: Join. 2 BY MR. DUBIN: 3 Q. However, you, when you're looking at 4 the yellow particles in your analysis, you 5 take these edge effects and you base your 6 calculations on them, correct?</p> <p>7 MR. LUDWIG: Same objection; 8 same instruction.</p> <p>9 MS. O'DELL: Misstates the 10 record and misleading and argumentative.</p> <p>11 MR. DUBIN: All right.</p> <p>12 BY MR. DUBIN:</p> <p>13 Q. Do you have experience working with 14 and analyzing Cargille glass?</p> <p>15 A. Not analyzing, but utilizing it --</p> <p>16 Q. Have you --</p> <p>17 A. -- I do recall.</p> <p>18 Q. Have you ever observed these types 19 of phenomena when looking at Cargille glass?</p> <p>20 A. I have not.</p> <p>21 Q. Okay. What is a -- do you know how 22 to perform a Becke line analysis?</p> <p>23 MS. O'DELL: Beyond the scope 24 of the reports in this case and seeks expert 25 opinion.</p>
<p style="text-align: right;">Page 139</p> <p>1 color is? Do you know how to do that?</p> <p>2 MR. LUDWIG: Same objection.</p> <p>3 MR. DUBIN: Are you instructing 4 your witness not --</p> <p>5 MR. LUDWIG: I am.</p> <p>6 MR. DUBIN: -- to answer?</p> <p>7 MS. O'DELL: Join.</p> <p>8 MR. DUBIN: Okay.</p> <p>9 BY MR. DUBIN:</p> <p>10 Q. Are you familiar with why you can 11 get these types of red edges around certain 12 particles that do not reflect the true central 13 stop dispersion staining color of the 14 particle? Do you know anything about that?</p> <p>15 MR. LUDWIG: Same objection; 16 same instruction.</p> <p>17 MR. DUBIN: Okay.</p> <p>18 MS. O'DELL: Join.</p> <p>19 BY MR. DUBIN:</p> <p>20 Q. If you were to base your calculation 21 of the refractive index of this piece of 22 Cargille glass on the red edge here, you would 23 be getting the wrong result, correct?</p> <p>24 MR. LUDWIG: Same objection; 25 same instruction.</p>	<p style="text-align: right;">Page 141</p> <p>1 MR. DUBIN: Are you --</p> <p>2 MR. LUDWIG: Join.</p> <p>3 MR. DUBIN: -- instructing him 4 not to answer?</p> <p>5 MR. LUDWIG: Not to answer.</p> <p>6 BY MR. DUBIN:</p> <p>7 Q. Do you know how to use a Becke line 8 analysis to determine in a situation such as 9 we're looking at here what the correct CSDS 10 color is?</p> <p>11 MR. LUDWIG: Same objection; 12 same instruction.</p> <p>13 MS. O'DELL: Join.</p> <p>14 BY MR. DUBIN:</p> <p>15 Q. Have you performed any Becke line 16 analysis with respect to any of the particles 17 that you're claiming are chrysotile in Johnson 18 & Johnson?</p> <p>19 A. I have not.</p> <p>20 Q. Okay.</p> <p>21 MR. PLACITELLA: Morty, you 22 look really hungry.</p> <p>22 MR. DUBIN: All right. We can 23 take lunch now. How long do you guys want?</p> <p>25 We can go off the record.</p>

<p style="text-align: right;">Page 142</p> <p>1 VIDEOGRAPHER: The time is 2 12:38 p.m. We're off the record. 3 (Break held off the record.) 4 VIDEOGRAPHER: The time is 5 1:28 p.m. We are back on the record. 6 BY MR. DUBIN: 7 Q. All right. Well, we'll see. If 8 there is an objection to this as well and this 9 topic, then we'll move on from it, but I need 10 to ask it to make sure. 11 So I put together a slide and I 12 put together some excerpts from the Valadez 13 report just so they are all in one spot for 14 the backup of this slide. 15 We'll mark the backup, which is 16 CX-12, as the next exhibit in order. I guess 17 that's 20? 18 THE COURT REPORTER: If you 19 would like me to check, give me one moment. 20 MR. DUBIN: Sure. Thanks. 21 MR. KEESTER: I believe that's 22 21. 23 MR. DUBIN: Twenty-one. 24 THE COURT REPORTER: I will 25 take counsel's assertion it's 21 without</p>	<p style="text-align: right;">Page 144</p> <p>1 BY MR. DUBIN: 2 Q. Okay. But it is true, Mr. Hess, 3 that when you're calling particles chrysotile 4 in Johnson & Johnson, you're basing that not 5 on the color of the particle that you're 6 seeing, but on the color of the edge effects 7 that you're seeing, right? 8 A. Focused at the edge, this -- the way 9 everything I do is set up initially with the 10 alignment and centering of all the objectives 11 and lenses with the scope, with the 12 illumination lamp full, field diaphragm open, 13 and I scan for a suspicious object. 14 When I focus in on what appears 15 to be suspicious, I first make sure that I can 16 see signs of fibrousity. Then I go back to 17 dispersion staining and I will utilize what's 18 in Dr. Su's paper, looking at the edge, as 19 stated on page 3 and page 5, utilizing what's 20 on page 5, which specifically shows or 21 indicates to me looking at the edge -- 22 Q. Page 5 of what? 23 A. -- specifically says: At particle 24 edge. 25 Q. Page 3 and page 5 of what?</p>
<p style="text-align: right;">Page 143</p> <p>1 checking. 2 MR. DUBIN: Okay. It's 21 3 then. All right. So we'll make that 21 and 4 can you just put it in chat, Jake? 5 MR. KEESTER: Already done. 6 MR. DUBIN: And then the slide 7 which will be 22 and that's slide 48. 8 (Exhibits 21 and 22 marked for 9 identification.) 10 BY MR. DUBIN: 11 Q. I tried to ask you this already, 12 Mr. Hess, but the same type of edge effects 13 that you're relying on to call particles 14 chrysotile in Johnson & Johnson are also 15 present on talc plates in your analysis; is 16 that true? 17 MS. O'DELL: Objection. This 18 is beyond the scope of the deposition and 19 Mr. Hess' testimony. 20 Further, the way that these 21 particles are depicted from who knows what is 22 misleading and not representative of what was 23 actually in the reports. 24 MR. LUDWIG: I will join and 25 instruct the witness not to answer.</p>	<p style="text-align: right;">Page 145</p> <p>1 MS. O'DELL: He is not 2 finished, Morty. 3 BY MR. DUBIN: 4 Q. Sorry. 5 A. And then I -- best I can or I will 6 do everything I can to make sure that what I 7 am seeing is best represented in the 8 photograph that I take and I am not seeing the 9 things on the screen, I use the scope. 10 Q. So are you telling me that in order 11 to understand your work and the calls that 12 you're making, that I -- someone needs to be 13 actually looking through your microscope? 14 MR. LUDWIG: Objection. 15 MS. O'DELL: Objection. 16 BY MR. DUBIN: 17 Q. You can respond. 18 A. No, sir. I am sure there is plenty 19 of the sample available where someone at your 20 client's place can do the same thing. 21 Q. Well, just to understand what the 22 call is that you're making on a particular 23 particle, do I need to be looking through your 24 scope? 25 A. It's documented in the photographs</p>

1 and the reports that are submitted. 2 Q. So if we don't see something in the 3 photograph that you're claiming is there, then 4 it wasn't really there? 5 MS. O'DELL: Objection. 6 MR. LUDWIG: Objection. 7 MS. O'DELL: Argumentative. 8 MR. LUDWIG: Objection to form; 9 argumentative. 10 BY MR. DUBIN: 11 Q. You can respond. 12 A. It doesn't mean that it wasn't 13 there. I use the scope, not the screen. 14 Q. Okay. You mentioned illumination. 15 So I just want to talk about that again for a 16 second. We can go back to the Valadez report. 17 We can go to -- let's go to the first image, 18 the No. 1. I think it's thirty- -- okay. 19 Is it your testimony that the 20 Leica microscope that you're using can't take 21 images that are any brighter than this? 22 A. I believe I have already answered 23 that question. 24 Q. I'm asking about this specific 25 image.	Page 146 1 seeing here in image 62? 2 MS. O'DELL: Let me just -- 3 what is being displayed on the screen? 4 MR. DUBIN: I am just using it 5 for demonstrative purposes right now and I am 6 asking him a question about his microscope. 7 BY MR. DUBIN: 8 Q. Is it able to take images that are 9 as bright as the one that we see on the 10 screen? 11 MS. O'DELL: Object to the -- 12 object to the question; calls for expert 13 testimony. It's beyond the scope of what he 14 did for purposes of these reports. 15 MR. LUDWIG: I want to add that 16 these images call for speculation. I mean, he 17 is being asked to analyze an image on 18 PowerPoint on an unknown -- an unknown source. 19 I think this, once again, calls 20 for expert testimony to make that comparison. 21 So I am going to instruct him not to answer 22 the question. 23 MR. DUBIN: I am asking him 24 about his microscope, his illumination 25 settings, what he sees under the microscope,
Page 147 1 Do you have an answer, sir? 2 A. In reference to this image, as I 3 recall the previous image was something a 4 little different. So I would have to say, 5 yes. 6 Q. I'm sorry. I don't understand. 7 So to make sure the question is 8 clear, is it your testimony that the Leica 9 microscope cannot take any brighter image than 10 what we see here? 11 MS. O'DELL: Objection to the 12 form; asked and answered. 13 THE WITNESS: I cannot answer 14 as to the actual scope itself, but in my 15 experience with it, this is the brightest I 16 can get it. 17 MR. DUBIN: I just want to show 18 you -- we'll mark it as the next exhibit in 19 order. I guess it's -- now we're on 23, 20 CX-62. 21 (Exhibit 23 marked for 22 identification.) 23 BY MR. DUBIN: 24 Q. Is your Leica microscope able to 25 take images that are as bright as what we're	Page 149 1 and I'm asking him whether his microscope that 2 he knows and he works with is capable of 3 producing an image at this illumination level 4 and my question stands. 5 BY MR. DUBIN: 6 Q. Can you answer that for me, 7 Mr. Hess? 8 MR. LUDWIG: And I am making 9 the same objection I made and I am 10 incorporating the same response and 11 instructing him not to answer. 12 You're asking for a comparison. 13 BY MR. DUBIN: 14 Q. Okay. I will tell you what this is, 15 Mr. Hess. This was an image that was taken by 16 Dr. Su on the same type of microscope that 17 you're using. 18 Are you testifying that your 19 microscope cannot take images at this level of 20 illumination? 21 MS. O'DELL: Objection; calls 22 for expert testimony, it's beyond the scope of 23 this deposition, and he has testified already 24 to the level of illumination that he has used 25 in the photomicrographs for these reports.

<p style="text-align: right;">Page 150</p> <p>1 MR. LUDWIG: Once again, I am 2 going to incorporate my previous objections 3 and instruct him not to answer. Dr. Su -- 4 MR. DUBIN: If you're going to 5 instruct him not to -- if you're going to 6 instruct him not to answer, we don't have 7 to -- 8 MR. LUDWIG: I instruct him not 9 to answer then. 10 MR. DUBIN: And that's fine. 11 Because we will be arguing about this at some 12 point. 13 BY MR. DUBIN: 14 Q. But let me ask you again, Mr. Hess, 15 are you testifying under oath that the images 16 that you have for, for example, in the Valadez 17 report we have looked at are taken at as high 18 an illumination setting as the microscope 19 goes? Are you testifying to that? 20 MS. O'DELL: Asked and 21 answered. 22 THE WITNESS: Yes. 23 BY MR. DUBIN: 24 Q. What is the correct formula for 25 determining birefringence?</p>	<p style="text-align: right;">Page 152</p> <p>1 dispersion staining colors for chrysotile in 2 1.550 in parallel and perpendicular? 3 A. In parallel, generally, if you can 4 get a single fiber, which is what I understand 5 that gives you the best, but, unfortunately, 6 in chrysotile, they are too small. So they 7 deal with bundles. 8 But, generally, you're looking 9 in the blue, magenta range; and in gamma, 10 based on the Canadian chrysotile, as I 11 understand it, and perpendicular, which is the 12 alpha, would be in the lighter blue range. 13 Q. Okay. And what is your 14 understanding of the CSDS colors associated 15 with Calidria in 1.550? 16 A. I am not familiar with that 17 particular table. 18 Q. Okay. So you don't have a view of 19 what colors Calidria asbestos demonstrates in 20 parallel or perpendicular in 1.550? 21 A. From my experience. 22 Q. Okay. So what is it? 23 A. Well, it ranges between the 24 Calidria -- excuse me -- between the Canadian 25 chrysotile standard and a yellow gold color</p>
<p style="text-align: right;">Page 151</p> <p>1 A. I keep a manual handy for 2 mathematics. 3 Q. What manual? 4 A. I have the McCrone manual and other 5 manuals within the laboratory covering what 6 McCrone covers in his coursebook. 7 Q. Do you recall the name of the 8 manual? 9 A. No, I do not recall. 10 Q. Okay. Do you recall anything about 11 it other than it's a manual? When it's from? 12 Who the author is? Anything? 13 A. The author is McCrone. 14 Q. Okay. Do you recall what the 15 formula is, how you -- what numbers do you 16 use? What -- how do you calculate? 17 A. I don't recall. That's why we keep 18 reference materials. 19 Q. Are you the one who does the 20 birefringence calculations for these reports? 21 A. No. 22 Q. Who does them? 23 A. I believe it's part of what 24 Dr. Longo puts together. 25 Q. Okay. What are the correct central</p>	<p style="text-align: right;">Page 153</p> <p>1 gamma. 2 Q. Okay. So you're saying in parallel 3 it's -- you're claiming that Calidria will be 4 between a yellow gold and a magenta. 5 Is that what you're saying? 6 A. That's been my experience. 7 Q. Okay. Are you aware of any 8 scientific references that say that Calidria 9 in 1.550 will be yellow gold in parallel? 10 A. I am not aware of any. 11 Q. Can -- in your experience can talc 12 be yellow gold in parallel? 13 A. In my experience what I have seen 14 that ends up what I will call talc, that's 15 generally a very, very pale yellow at best to 16 white. 17 Q. So talc should be pale yellow to 18 white. 19 MR. DUBIN: Can we go back to 20 the Zimmerman image -- go back to the 21 Zimmerman report for a second. 22 BY MR. DUBIN: 23 Q. Looking again at the Zimmerman 24 image, we see some talc plates here. 25 Why isn't your talc pale yellow</p>

1 to white in this image? 2 MR. LUDWIG: (Inaudible.) 3 THE COURT REPORTER: I couldn't 4 hear you, sir. Please repeat. 5 MR. LUDWIG: I said, Paul, if 6 you need it zoomed in, please feel free to ask 7 it. 8 THE WITNESS: Well, one, my 9 previous comment was based on fibrous talc, 10 not talc flakes. 11 BY MR. DUBIN: 12 Q. And anything else? 13 A. No. 14 Q. Okay. The refractive index of 15 elongated talc or a talc fiber in parallel is 16 similar to the refractive index of the talc 17 plate, correct? 18 MS. O'DELL: Calls for an 19 expert opinion; beyond the scope of this 20 deposition. I -- 21 MR. LUDWIG: And I join and 22 instruct him not to answer. 23 MR. DUBIN: I am asking him 24 about what he just testified about, the 25 explanation that he just testified about, and	Page 154 1 material. 2 Q. First, who -- at some point were you 3 examining Johnson & Johnson using 1.550 oil, 4 but not reporting chrysotile? 5 MS. O'DELL: I'm sorry. I 6 missed the last part of that question. Would 7 you mind repeating it? 8 BY MR. DUBIN: 9 Q. At some point in time were you 10 analyzing Johnson & Johnson talc using 1.550, 11 but not reporting chrysotile? 12 MS. O'DELL: Object to the 13 form. 14 THE WITNESS: I don't recall. 15 MR. DUBIN: Again, but for the 16 Court's ruling, I would be asking now, along 17 those lines -- and I will just accept the -- 18 make the objections. Because we're going to 19 have to bring this up. 20 BY MR. DUBIN: 21 Q. You did a report -- you looked at 22 about 70-something samples of Johnson & 23 Johnson related talc using 1.550 oil and 24 reported chrysotile in none of the samples at 25 some point; isn't that right?
Page 155 1 you're instructing him not to answer. 2 Is that -- is that actually 3 happening? Because -- are you instructing him 4 not to answer that question? 5 MR. LUDWIG: Yes. 6 MR. DUBIN: Okay. 7 BY MR. DUBIN: 8 Q. The reason these are yellow and 9 orange -- these are all orange and gold is 10 because you have got a tungsten light shining 11 on them, right? 12 MS. O'DELL: Objection. 13 MR. PLACITELLA: I object to 14 your testimony, Morty. 15 BY MR. DUBIN: 16 Q. Is that correct? 17 MS. O'DELL: Same objection; 18 misstates the evidence. 19 THE WITNESS: That is correct. 20 BY MR. DUBIN: 21 Q. So you're saying Calidria -- when 22 did you first -- what is your view that 23 Calidria asbestos in parallel can be yellow 24 gold based on? 25 A. Experience examining the Calidria	Page 155 Page 157 1 MS. O'DELL: That is -- that is 2 direct -- 3 MR. DUBIN: Okay. I -- 4 MS. O'DELL: -- in -- 5 MR. DUBIN: -- that you're 6 going to object to it. I just want the 7 question on the record because we're going 8 to -- I want to -- we're going to take this at 9 issue. 10 So I understand. You can 11 object per the Court and instruct him not to 12 answer. 13 MR. LUDWIG: I instruct him not 14 to answer. 15 I do have a question for you, 16 Mr. Dubin. Are you done with this image? 17 Because the -- 18 MR. DUBIN: I will take it 19 down; that's fine. 20 MR. LUDWIG: I just don't know. 21 Because I see Paul straining to watch you; 22 that's why I asked. 23 MR. DUBIN: Uh-huh. 24 BY MR. DUBIN: 25 Q. So at some point you decide to use

1 Calidria as a reference. 2 Whose idea was that at MAS? 3 A. As I recall, it was a collaborative 4 effort between Dr. Longo and myself. 5 Q. But who first suggested using 6 Calidria as a reference? 7 A. That I do not recall. 8 Q. Okay. When is the first time you 9 recall ever looking at Calidria by PLM 10 dispersion staining analysis? 11 A. I don't recall when that was either. 12 Q. But do you recall even generally? 13 Like, what -- was it within the last ten 14 years? Five years? Before that? 15 A. Within the last five. 16 Q. Did you ever participate in any 17 NVLAP proficiency testing related to Calidria? 18 A. No. 19 Q. So the whole reason why dispersion 20 staining can be used is because minerals have 21 defined refractive indices, right? 22 MR. LUDWIG: That calls for 23 expert testimony, objection. 24 I instruct you not to answer. 25 MS. O'DELL: Join.	Page 160 1 BY MR. DUBIN: 2 Q. We saw in the Zimmerman image that 3 your talc could appear golden yellow, right? 4 MS. O'DELL: Object to the 5 form. 6 It's not his talc. It's 7 Johnson & Johnson talc. 8 BY MR. DUBIN: 9 Q. Your images of talc can appear 10 golden yellow, right? 11 A. Off the -- the Olympus BH2, yes. 12 Q. So if both -- if in your view both 13 Calidria and talc can show golden yellow in 14 parallel, how are you distinguishing between 15 them? 16 MS. O'DELL: Objection to the 17 form. 18 THE WITNESS: By whether I am 19 actually looking at fibrous talc or talc 20 plates. 21 BY MR. DUBIN: 22 Q. But your elongated talc -- now, 23 first of all, do you have any -- do you have 24 images -- what is your practice about imaging 25 when you do a review? Do you always take
Page 159 1 BY MR. DUBIN: 2 Q. Why -- how is it that you can use 3 PLM to identify minerals by dispersion 4 staining? What property is it that allows you 5 to do that? 6 A. The refraction angle between 7 particle and oil creates a color that we can 8 use then to try to identify wavelength based 9 on temperature and the version of oil that's 10 been used. 11 Q. No question, if I look at Calidria 12 in 1.550, I can see generally magenta in 13 parallel and blue in perpendicular, right? 14 A. I have seen that in my experience. 15 Q. Okay. So how is it in your view 16 that somehow Calidria is also showing golden 17 yellow? What physical -- what property of 18 physics changes it so that sometimes when 19 you're finding it, it's to you golden yellow 20 as opposed to magenta? 21 MR. LUDWIG: Objection, same 22 objection. 23 I instruct you not to answer. 24 Calls for expert testimony. 25 MS. O'DELL: Join.	Page 161 1 images? 2 A. If we find a structure of interest. 3 Q. Do you do that both when you're 4 looking for fibrous talc and when you're 5 looking for chrysotile? You take images? 6 A. If I find something that I feel 7 comfortable calling fibrous talc, yes. 8 Q. Do you have images -- we'll go back 9 and do that. 10 So my understanding is that 11 you're trying to say that even with the 12 tungsten light shining on the particles, talc 13 plates are going to be golden yellow, but what 14 you're calling fibrous talc is going to be 15 still bright yellow or pale yellow even -- 16 MS. O'DELL: Objection. 17 BY MR. DUBIN: 18 Q. -- is that what you're saying? 19 MS. O'DELL: I'm sorry. 20 Objection; misstates his testimony. 21 BY MR. DUBIN: 22 Q. I mean, wouldn't the fibrous talc 23 also have the same color as the talc in 24 parallel? 25 MS. O'DELL: Object to the

<p>1 form.</p> <p>2 THE WITNESS: Not in my 3 experience have I seen that.</p> <p>4 BY MR. DUBIN:</p> <p>5 Q. Are you familiar with any published 6 reference values for the refractive indices of 7 talc in parallel, in talc -- elongated fiber 8 of talc in parallel?</p> <p>9 MS. O'DELL: Objection; calls 10 for expert testimony; beyond the scope of the 11 work he has done in this -- in these reports.</p> <p>12 MR. LUDWIG: I join and I 13 instruct him not to answer.</p> <p>14 MR. DUBIN: Okay. And just one 15 more time, for purposes of the record, all of 16 this is going to his knowledge, experience, 17 and training and how he has formulated the 18 opinions that he has stated in these reports 19 and I am being prevented from asking these 20 questions. We're going to go to the Court 21 about it, but I am going to keep going for a 22 little while so that we make clear what you 23 are objecting to or not.</p> <p>24 MS. O'DELL: There is a 25 difference between asking about the work he</p>	<p>Page 162</p> <p>1 Q. Sure. Did you review -- as part of 2 using Calidria as a standard for your 3 analysis, did you review any MAS historical 4 analysis of Calidria and its dispersion 5 staining colors?</p> <p>6 A. I am not aware of anything like 7 that, no.</p> <p>8 MR. DUBIN: Okay. Jake, I 9 don't have the number, but let's just call up 10 the historical MAS analysis as the next 11 exhibit. It should be around 132 or 133 of 12 the outline and it will be exhibit 24.</p> <p>13 (Exhibit 24 marked for 14 identification.)</p> <p>15 BY MR. DUBIN:</p> <p>16 Q. Were you aware that MAS had recorded 17 previously their refractive indices associated 18 with Calidria asbestos?</p> <p>19 MS. O'DELL: I object to -- 20 first, object to the use of this exhibit. 21 It's not been disclosed in the MDL, it's not 22 something that this witness should be asked 23 about, but I would -- I would encourage 24 counsel to instruct him not to answer. This 25 is beyond the scope.</p>
<p>1 has done for these particular reports and 2 asking about methodology for things he hasn't 3 done and goes into expert opinion and that's 4 what we're basing our objections. It's 5 clearly within the scope of Judge Schneider's 6 order.</p> <p>7 MR. DUBIN: Okay. Well, we 8 have done that. We'll do this at the end.</p> <p>9 BY MR. DUBIN:</p> <p>10 Q. You were never told at McCrone when 11 you were doing your PLM training that somehow 12 Calidria could not be identified by the 13 standard colors associated with chrysotile; 14 right? No one said that to you, correct?</p> <p>15 A. Nothing was mentioned about Calidria 16 during the course.</p> <p>17 Q. Do you know whether Calidria is 18 mentioned in ISO 22262?</p> <p>19 A. I am not aware of that.</p> <p>20 Q. Okay. Have you reviewed -- as part 21 of familiarizing yourself with Calidria for 22 purposes of using it as a standard, did you 23 review any historical MAS analysis of Calidria 24 by dispersion staining?</p> <p>25 A. Would you, please, rephrase that?</p>	<p>Page 163</p> <p>1 MR. LUDWIG: I was going to. 2 This is totally beyond the scope of what the 3 Judge said. So I am objecting to the question 4 and I am instructing my client not to answer.</p> <p>5 BY MR. DUBIN:</p> <p>6 Q. Okay. So you don't know whether at 7 MAS, before they tried to claim that there was 8 chrysotile in Johnson & Johnson, they reported 9 that Calidria would look magenta in parallel 10 and blue in perpendicular.</p> <p>11 You're not aware of that?</p> <p>12 MS. O'DELL: Objection to the 13 statements of counsel testifying, objection to 14 the representations about this document we 15 have never seen, and it is beyond the scope of 16 this deposition.</p> <p>17 MR. DUBIN: Okay.</p> <p>18 MR. LUDWIG: I join the 19 objection.</p> <p>20 BY MR. DUBIN:</p> <p>21 Q. You were using Calidria as your 22 reference in the reports that we have been -- 23 that you have produced claiming to find 24 chrysotile in Johnson & Johnson, correct?</p> <p>25 MS. O'DELL: Objection.</p>

1 MR. LUDWIG: Objection; 2 argumentative. 3 BY MR. DUBIN: 4 Q. Is that correct? 5 MS. O'DELL: Restate your 6 question. 7 BY MR. DUBIN: 8 Q. You were using Calidria asbestos as 9 the reference material for chrysotile with 10 respect to the reports that you have issued 11 claiming to find chrysotile in Johnson & 12 Johnson, correct? 13 MR. LUDWIG: Objection to the 14 form. 15 MS. O'DELL: Object to the 16 form. 17 THE WITNESS: We had not used 18 the Calidria to -- the only way we have used 19 the Calidria is to create standards in order 20 to calibrate for levels of concentration. 21 BY MR. DUBIN: 22 Q. I'm sorry. You're using it only to 23 calibrate levels of concentration. 24 What do you mean by that? 25 A. I mean by what might be visually	Page 166 1 Johnson, are you reporting based on seeing the 2 actual particle being magenta in parallel? 3 A. I am reporting based on the colors I 4 see at the edge. 5 Q. Does the actual particle itself, 6 where you see the main color, is that ever 7 magenta itself? 8 MS. O'DELL: Would you repeat 9 the question, please? 10 BY MR. DUBIN: 11 Q. In the main center of the particle, 12 not these edge effects, do you recall ever 13 reporting it as the main color being magenta 14 itself, not the edge? 15 A. I have seen that, yes. 16 Q. Can you identify any report or any 17 image where you have seen the interior of 18 the -- what you're calling chrysotile in 19 Johnson & Johnson being magenta, any image, 20 any report? 21 A. I do not recall. 22 Q. I want to ask you a little bit about 23 your reference images of Calidria in 1.560 24 and -- 25 MR. PLACITELLA: Could you
Page 167 1 apparent within a set of standards. 2 Q. But you would agree that what you're 3 identifying as chrysotile in Johnson & Johnson 4 does not look like standard reference 5 chrysotile, correct? 6 It does not have the magenta in 7 parallel and blue in perpendicular associated 8 with standard reference Chrysotile, correct? 9 MS. O'DELL: Objection; 10 misstates the record; calls for expert 11 opinion. 12 MR. LUDWIG: Join. I instruct 13 the witness not to answer. 14 MR. DUBIN: So you're 15 instructing him not to answer about the colors 16 that he is seeing in the analysis that this 17 whole deposition is about? Is that my -- is 18 that right? 19 MS. O'DELL: That's not 20 correct. 21 MR. LUDWIG: I am instructing 22 him not to answer the question as asked. 23 BY MR. DUBIN: 24 Q. What -- are you reporting -- when 25 you're reporting chrysotile in Johnson &	Page 168 1 just, please, define your reference images, 2 please? Thank you. 3 MR. DUBIN: The reference 4 images that he created on the PLM that are 5 part of Dr. Longo's reports. 6 MR. PLACITELLA: Thank you. 7 MS. O'DELL: Which reports? 8 MR. DUBIN: I am about to mark 9 it, but I got interrupted. All right. So -- 10 MR. PLACITELLA: I wasn't 11 objecting. I was just asking. 12 MR. DUBIN: So we'll mark 13 CX-00029 or CX-29 as the next exhibit. I 14 guess we're at 25. 15 (Exhibit 25 marked for 16 identification.) 17 MR. DUBIN: If we can turn that 18 a little bit? 19 MS. O'DELL: And what report 20 did this image come from? 21 MR. DUBIN: Let's show the 22 front of the report, too, if we have it. It's 23 from the (inaudible). 24 MR. KEESTER: Morty, I don't 25 have the first page of this report. I can go

1 find it if need be. 2 MR. DUBIN: Okay. Well, let's 3 make sure that we mark it as an exhibit so 4 they have the entire report. The full report 5 will be 26. 6 MS. O'DELL: I want to make 7 sure that this report is at issue in the MDL. 8 Can you represent to me which report this 9 image came from? 10 MR. DUBIN: These are all of 11 the reference images that Dr. Longo provides 12 along with all of these reports as his 13 references for his chrysotile findings. These 14 are all part of his analysis in -- it's all 15 part of the chrysotile analysis that is being 16 discussed in these -- in this deposition. 17 MS. O'DELL: With due respect, 18 Morty, that doesn't mean anything. I mean, 19 the question is, is -- is this -- 20 MR. DUBIN: Dr. Longo is 21 relying on these reference images for his 22 identification of chrysotile in the reports 23 that we are discussing today. 24 MS. O'DELL: And I am asking 25 you what report does this image come from?	Page 170 1 Calidria to say there is chrysotile in Johnson 2 & Johnson as part of this analysis are somehow 3 off limits, but if you're going to take that 4 position, you're going to take that position. 5 MS. O'DELL: I'm not -- 6 MR. DUBIN: We'll take -- 7 MS. O'DELL: -- the position I 8 am taking is that you have an image on the 9 screen. We have -- 10 MR. DUBIN: Okay. 11 MS. O'DELL: -- no idea where 12 it came from -- 13 MR. DUBIN: (Inaudible.) 14 MS. O'DELL: (Inaudible.) 15 THE COURT REPORTER: I'm sorry. 16 This is the court reporter. Everyone is 17 talking at once and I can't hear anything. 18 Apologies. 19 MS. O'DELL: Jessica, I'm 20 sorry. I mean, I am just trying to finish my 21 objection. 22 We have no idea where this 23 image came from. I am just asking -- you're 24 saying it's a reference image from Dr. Longo. 25 I have no idea of the context and we --
Page 171 1 That's what I am asking you. 2 MR. DUBIN: I will tell you the 3 name of the report, but it will be one of 4 Dr. Longo's reference image reports that he 5 supplies along with the chrysotile finding -- 6 alleged chrysotile findings from Johnson & 7 Johnson. 8 MS. O'DELL: Well -- 9 MR. DUBIN: (Inaudible.) 10 MS. O'DELL: -- comes from 11 without knowing if it's at issue in the MDL -- 12 MR. DUBIN: It is at issue in 13 the MDL because they are his reference images 14 that he is using to compare reference 15 chrysotile to the reports that he has produced 16 in the MDL. These are his reference images 17 that are incorporated in all of his materials. 18 MS. O'DELL: I don't -- 19 MR. DUBIN: Okay. We can take 20 a ten-minute break. We'll get the whole 21 report and then if you want to still instruct 22 him not to answer, then we'll just add it to 23 the pile of things, but I really can't see how 24 any legitimate argument could be made that the 25 reference images that they are relying on for	Page 173 1 MR. DUBIN: (Inaudible.) 2 MS. O'DELL: -- know that 3 before the -- 4 MR. DUBIN: I am telling you 5 what the context is now. Because apparently 6 he produces them as individual images. He 7 doesn't produce them as part of a report, but 8 when he is requested to produce the reference 9 images that he is relying on to use as a 10 reference for chrysotile in 1.560, he just 11 produces these images as the standards that he 12 is relying on. 13 So it's part of the materials 14 that he relies on for these reports and his 15 conclusions about the chrysotile -- alleged 16 chrysotile in Johnson & Johnson. 17 MR. PLACITELLA: I hear you -- 18 I hear you, Morty, but you're not deposing 19 Dr. Longo here. 20 MR. DUBIN: But these are 21 images taken by Mr. Hess. 22 MS. O'DELL: Well, and to my 23 knowledge -- and I can be corrected on this, 24 Morty, but this is not an image that's been 25 produced in the MDL in relation to Dr. Longo's

1 testimony. 2 MR. DUBIN: I am sure he has 3 produced his reference images because he 4 always produces his reference images because 5 we always request his reference images. 6 If you really are going to shut 7 me down from asking a question about the 8 reference images that were -- that are relied 9 on for the reports in this case, then you're 10 going -- you're going to do that. You're 11 going to make the objection and we're going to 12 go and argue about it and I think it is highly 13 improper or you could let me ask him a 14 question about an image that directly relates 15 to his work and that he took. 16 MS. O'DELL: Well, we don't 17 have -- one, there is no evidence of that and 18 second is Mr. Hess is here to testify on the 19 reports that are produced in the MDL. Other 20 things that Dr. Longo relies on are not at 21 issue here for his opinions. So -- 22 MR. DUBIN: These are the -- 23 again, these are the images that Dr. Longo 24 uses with his reports and the whole purpose of 25 this is to ask the person who took the images	Page 174 1 MR. LUDWIG: And I am going to 2 join for the reasons stated and instruct the 3 witness not to answer. 4 MR. DUBIN: We're going to take 5 a ten-minute break. I'll be back. 6 VIDEOPHOTOGRAPHER: The time is 7 2:12 p.m. We are off the record. 8 (Break held off the record.) 9 VIDEOPHOTOGRAPHER: The time is 10 2:26 p.m. We are back on the record. 11 MR. DUBIN: So for the record, 12 I am going to mark as 26 Dr. Longo's 13 deposition in a case called Kayme Clark and 14 Dusty Clark v. Johnson & Johnson, where he 15 identifies these reference images so that it's 16 in the record. We'll put that in as 26. We 17 don't have to do anything with it. We're just 18 going to put it in the record. 19 (Exhibit 26 marked for 20 identification.) 21 BY MR. DUBIN: 22 Q. And then I am going to go back to 23 the image and I am going to ask you some 24 questions and if you're instructed not to 25 answer, you are instructed not to answer.
1 about them. 2 I am not going to continue to 3 argue with you. If you're going to instruct 4 the witness not to answer, go ahead and do it, 5 because I think that this deposition has gone 6 way off the rails and we're going to have to 7 go to the Judge about it. So just do whatever 8 you're going to do. I don't want to argue 9 with you anymore. 10 Are you claiming that you are 11 going to stop this person, Mr. Hess, from 12 talking about the reference images for the 13 alleged chrysotile in Johnson & Johnson? If 14 so, instruct him, and let's just have that 15 done. 16 MS. O'DELL: Judge Schneider 17 was very clear as to what was fair game in 18 this deposition and those are the reports 19 produced in the MDL that involve the new 20 method, to my knowledge. And you can correct 21 me, but I don't think I am incorrect. 22 This is not a part of those 23 reports and it's not something that's an 24 appropriate scope of this deposition and we 25 would instruct the witness not to answer.	Page 175 1 MR. DUBIN: So can we pull back 2 up the Calidria reference image? And I don't 3 think that was the page we were on; that was 4 one of them. 5 BY MR. DUBIN: 6 Q. So is this an image that is -- are 7 these your PLM images of Calidria 1.560? 8 A. Yes. 9 Q. Okay. And so all this blue stuff in 10 the background, that's Calidria? 11 A. That is correct. 12 Q. Okay. And you're aware that 13 Calidria can have impurities in it, too? 14 MR. LUDWIG: That's -- I am 15 going to object to the form and instruct him 16 not to answer; that's beyond the scope. 17 MR. DUBIN: Okay. 18 BY MR. DUBIN: 19 Q. Is this image taken at maximum 20 illumination? 21 A. It was. 22 Q. All right. So images on that 23 microscope don't get any brighter than this? 24 MS. O'DELL: Objection; asked 25 and answered.

1 MR. LUDWIG: Join. 2 MR. DUBIN: All right. Let's 3 make the next exhibit in order, which is 27, 4 we'll make it slide 61 -- sorry -- actually, 5 slide 95. 6 (Exhibit 27 marked for 7 identification.) 8 MS. O'DELL: I'm sorry. Is 9 this exhibit 27? 10 MR. DUBIN: Twenty-seven. 11 MR. LUDWIG: (Inaudible.) 12 THE COURT REPORTER: If you 13 just said something, Mr. Hess, I couldn't hear 14 you. 15 MR. LUDWIG: That was me 16 talking to myself. I apologize, Jessica. I 17 am simply saying that my exhibit list is 18 mis-numbered for some reason. 19 BY MR. DUBIN: 20 Q. Are you claiming those two -- those 21 two images have the same dispersion staining 22 colors? 23 MR. LUDWIG: I am going to 24 object to the form of the question. 25 MS. O'DELL: I object to the	Page 178 1 objections as made have been proper and 2 absolutely consistent with Judge Schneider's 3 prior ruling and I will object to any further 4 deposition of Mr. Hess. 5 MR. DUBIN: Okay. We'll have 6 to resolve that. All right. Thanks for 7 today. Take care. 8 VIDEOGRAPHER: The time is 9 2:31 p.m. We're off the record. 10 (Witness was excused.) 11 (Deposition concluded at 12 2:31 p.m.) 13 14 15 16 17 18 19 20 21 22 23 24 25
1 question. 2 MR. LUDWIG: Yeah. 3 MS. O'DELL: This is -- 4 MR. DUBIN: Are you instructing 5 him not to answer? 6 MS. O'DELL: Yes. This is 7 beyond the scope. 8 BY MR. DUBIN: 9 Q. Have you ever received any criticism 10 from NVLAP about your PLM work? 11 A. None that I am aware of. 12 MR. DUBIN: Okay. At this 13 point, you know, I think we're going to have 14 to go to the Court. I am going to shut the 15 deposition down for the day, but I am not 16 agreeing to end it. I think that the 17 restrictions that have been placed on me by 18 counsels' objections and instructions not to 19 answer are improper and we're going to seek 20 relief with the Court. 21 So I am suspending it for the 22 day because I think I am handcuffed, but I 23 understand you guys have different opinions. 24 So we'll just have to deal with it later. 25 MS. O'DELL: Our view is the	Page 179 1 CERTIFICATE 2 I HEREBY CERTIFY that prior to the 3 commencement of the examination, PAUL HESS, 4 was remotely sworn by me to testify to the 5 truth and that the proceedings, evidence, and 6 objections are contained fully and accurately 7 in the stenographic notes taken by me upon the 8 deposition taken on July 10, 2024, and this is 9 a true and correct transcript of same. 10 11 12  13 14 Jessica M. Gericke, RPR, CCR-NJ, 15 16 17 (The foregoing certification of this 18 transcript does not apply to any reproduction 19 of the same by any means, unless under the 20 direct control and/or supervision of the 21 certifying reporter.) 22 23 24 25

1 I have read the foregoing transcript
2 of my deposition given on July 10, 2024, and
3 it is true, correct and complete, to the best
4 of my knowledge, recollection and belief,
5 except for the corrections noted hereon and/or
6 list of corrections, if any, attached on a
7 separate sheet herewith.
8
9 _____
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14 Subscribed and sworn to
15 before me this ____ day
16 of _____, 20_____
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19 _____
20 Notary Public
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Page 183

1 ERRATA SHEET
2
3 PAGE LINE CHANGES OR CORRECTION AND REASON
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20 I have inspected and read my deposition as
captioned above and have listed all changes
21 and corrections above, along with my reasons
therefor.
22
23 DATE: _____
24 Signature of Deponent: _____
25

47 (Pages 182 - 183)

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

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